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Paper No. 8

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JUN 25 2002

In re Application of
Bianchi et al.
Application No. 09/941,154
Filed: August 27, 2001
Attorney Docket No. RTI-112RIA

OFFICE OF PETITIONS
DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed March 26, 2002 (certificate of mail date March 12, 2002):

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on August 27, 2001, without an executed oath or declaration. Accordingly, on December 12, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, the basic filing fee, additional claim fees, an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on March 26, 2002, applicant filed a \$130.00 surcharge, the present petition and a partially executed declaration. To make the petition timely a one (1) month request for extension of time was submitted. In support of the petition, rule 47 applicant has included a copy of correspondence sent to Diane Carter, the legal representative of deceased inventor Kevin Carter via her legal counsel Larry Ciesla.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirements (1) and (2).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers. The petition indicates "relevant" documents were sent to Ms. Carter. The copy of correspondence faxed to Ms. Carter's counsel indicates only the declaration/power of

attorney and assignment forms were sent to Ms. Carter. There is no indication application papers were submitted to Ms. Carter. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). In this case rule 47 applicant must submit a copy of the application papers to deceased inventor's legal representative, Diane Carter.

As to item (2), the declaration submitted does not comply with 37 CFR 1.64(b). Where an oath or declaration is being signed on behalf of a deceased inventor, the oath or declaration shall state the person is a legal representative and provide the name, citizenship, residence and mailing address of the legal representative.

Thus, on renewed petition, applicant must establish that the entire application package, including specification, claims and drawings, was presented to deceased inventor's legal representative and the legal representative refused to execute the documents. An oath or declaration with deceased inventor's legal representative's information must be included on the declaration.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


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